COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

POWER DEVELOPMENT SYSTEMS, INC. COMPLAINANTS	)	
vs.	)	CASE NO. 9456
KENTUCKY UTILITIES COMPANY DEFENDANT	)	

O R D E R

On October 24, 1985, Power Development Systems, Inc., ("Power Systems") filed a complaint against Kentucky Utilities Company ("KU"). Power Systems alleges that KU is violating Federal Energy Regulatory Commission ("FERC") Rule 69, Section 292.304 and 292.305 in their proposed contract for Weisenberger Mill ("Weisenberger"). On November 12, 1985, the Public Service Commission ("Commission") ordered KU to respond or answer Power Systems' complaint. On November 25, 1985, KU responded denying all allegations. On December 23, 1985, the Commission staff, KU and Power Systems held an informal conference to clarify and attempt to resolve the complaint. The parties were unable to reach any agreement on the complaint. As a result of this impasse a public hearing was scheduled, and KU was required to prefile testimony on whether the proposed Weisenberger purchase contract met the Commission requirements under 807 KAR 5:054, Section 7(1)(a), Section 7(3), Section 6(5), and Section 6(6)(a)(b).

On March 26, 1986, a public hearing was held in this matter. Witnesses appearing for the various parties were as follows:

David Kinloch - Vice President, Power Development Systems

Ronald Wilhite - Director, Rates and Economic Research, Kentucky Utilities Company

A. Doyle Baker - Vice President of Engineering and Construction, Kentucky Utilities Company

All information requests and briefs were filed as ordered.

Areas of Dispute

Weisenberger Sales Options

Power Systems in its complaint alleges that in offering its proposed contract for purchase, KU has denied the sales options to the Weisenberger Mill project as required by the FERC Rule 69. Power Systems contends that under Section 292.304(3)(1) and (d)(2), Weisenberger is given the option of either selling all of its self-generated electricity or selling its excess production on an "as available" basis to KU. While Power Systems indicated to KU that it intends to exercise its option of selling on an "as available" basis it contends that KU's proposed metering and compensation system would in effect result in Power Systems selling all of its power to KU.

In response to Power Systems' complaint KU denies the allegation and argues that the proposed contract meets the requirements of the FERC rule and this Commission's Orders and Regulations. KU contends that the complex engineering and economic problems it incurred in accomodating the Weisenberger proposal necessitated the design of the contract and not a desire to deny Weisenberger Mill the ability to use its own power. In fact KU contends that

Weisenberger can use its own power and the appearance that the option is not available is the result of a lack of "capacity value in the Weisenberger unit."[1] According to KU this lack of capacity value is the result of inadequate stream flows during KU's summer peaking season and flooding during its winter peak season.

The fundamental issue in this complaint is whether the proposed contract is in compliance with Section 7(1)(a) and (1)(b) of 807 KAR 5:054. The Commission fully recognizes the complexities of designing contracts which meet the requirements of both the FERC rule and the Commission's regulations, but despite these complexities, the Commission's requirements must still be met. It is the Commission's opinion that KU has proposed a sales arrangement which results in Weisenberger Mill having only the option of simultaneous sale and purchase and not the full range of sales options contemplated in the regulation. KU's proposed metering and billing arrangements do not differ under either Section 7(1)(a) or (1)(b), thus effectively reducing both subsections to simultaneous purchase and sale. The intent in having two subsections in this regulation is to provide for differentiation based upon different methods of selling power generated. KU has contended that no differentiation results from no capacity value in Weisenberger's project. The Commission rejects that explanation, however, since the recognition of capacity value would only adjust the level of payment and not the billing procedure.

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[1] Transcript of Evidence, March 26, 1986, page 237.

Under Section 7(1)(a) of the Commission's regulation a QF should receive both a bill for the separate services provided by the electric utility and a check or credit for the energy sold to it by the QF. It is the intention of both the FERC Rule and this Commission's regulation to provide maximum incentive for the development of small power. To deny small power producers an option which is available in both the FERC rule and the Commission's regulation, in effect contradicts this objective. Further, to the extent that capacity value is not reflected in the proposed compensation system, the structure of the proposed contract should not be affected. Therefore, the Commission will require KU to prepare and offer a contract which provides Weisenberger with the proper sales options as described in 807 KAR 5:054, Section 7(1)(a)(b).

Weisenberger As a Separate Class and Backup Rates

Having determined that the proposed contract does not comply with the Commission's regulation there are a number of other issues which have to be addressed in this proceeding. KU, by the testimony of Mr. Willhite, contends that Weisenberger should properly be considered as a separate rate class and not be served under the GS rate schedule. KU contends that by generating its own power Weisenberger would be a partial requirement customer with 100 percent back-up power, maintenance power plus supplementary power.[2] KU contends that under the present GS rate structure

[2] Willhite Prefiled Testimony, page 12.

it would not recover revenues sufficient to cover the cost of serving Weisenberger; thus other customers would subsidize Weisenberger.

As to the proper level of backup rates, KU contends that it will be necessary to maintain 100 percent backup on generation plant to meet the power requirements of Weisenberger. According to the proposed contract filed with the Commission, Weisenberger may require up to 82 kw of backup power, while the maximum capacity of its proposed generator will be 67 kw, depending on the flow of the stream. In support of its position KU argues that the intermittent nature of the stream flow will require it to provide capacity during both its summer and winter system peaks. Further, because of the fixed nature of capacity costs any revenue shortfall will be absorbed by other customers. Thus, in terms of cost avoided in providing Weisenberger backup service KU argues that it will only avoid energy related costs and that Weisenberger should pay full demand related costs for backup power.

Power Systems does not concur with KU's contention that Weisenberger will be a separate rate class. Power Systems argues that it is the intent of PURPA that a customer be treated the same whether or not they have a generator. Power Systems goes on to argue that the current GS rate structure has mechanisms built into it to fully recover the costs associated with serving the GS class and that KU through its customer charges, demand charges and declining block kwh charges will be adequately compensated for Weisenberger's cost of service. Thus Power Systems disagrees with KU's proposal for 100 percent backup power rates.

In determining whether it is proper to consider Weisenberger as a separate rate class the Commission has relied extensively on the FERC Rule 69. In the section-by-section analysis the FERC has provided guidance on the criteria to be considered in determining the rate class assignment and the rate to be charged the small power producer. The section-by-section analysis states:

> Accordingly, this section now provides that for qualifying facilities which do not simultaneously sell and purchase from the electric utility, the rate for sales shall be the rate that would be charged to the class to which the qualifying facility would be assigned if it did not have its own generation.
>
> Subparagraph (2) provides that if, on the basis of accurate data and consistent system-wide costing principles, the utility demonstrates that the rate that would be charged to a comparable customer without its own generation is not appropriate, the utility may base its rates for sales upon those data and principles. The utility may only charge such rates on a nondiscriminatory basis, however, so that a cogenerator will not be singled out or lose any interclass or intraclass subsidies to which it might have been entitled had it not generated part of its electric energy needs itself.[3]

In this proceeding KU has not provided data which would demonstrate that Weisenberger's load, without generation, is such that it should be in another class of service. Therefore the Commission is of the opinion that Weisenberger should be classified as a GS customer. If in some future proceeding KU can demonstrate that the Weisenberger load without generation does not conform to the tariff requirements of the GS rate classification then at that time the Commission will consider reclassifying Weisenberger into a more proper rate class.

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3 FERC Rule 69, §292.305, Rates for Sale (Section by Section Analysis), pages 81-82.

The Commission in determining proper backup rates finds itself in the position that neither KU nor Power Systems can provide the information necessary to develop proper backup rates. The Commission concurs with KU that there is some probability that Weisenberger will require backup power during any hour of the day. However the only information provided during this proceeding concerning the determination of that probability was Power Systems' 100 year stream flow data. The Commission does not agree with KU that this information translates into a 100 percent capacity reservation for each hour that KU will be required to provide backup for Weisenberger Mill. Therefore because of the lack of information, and the cost of developing rate estimates, the Commission will adopt the GS rate schedule for Weisenberger. The Commission is of the opinion that if KU is correct and only a few potential QFs exist then the effects on KU and their customers will be de minimus. However, if a number of cogenerators and small power producers develop, then an evaluation based on the group probability of being on during KU's peak can be determined.

Metering

KU in its proposed contract offered a three-way metering method for determining the amount of energy generated and consumed by Power Systems. KU would meter power flow in and out of the delivery point and the output of the Weisenberger generator. The metering would be a time-of-day capability so that proper credit could be provided to Weisenberger. KU contends that without this metering capability then it could not properly recover the cost to serve Weisenberger.

In response to KU's proposed metering system Power Systems contends that the proposed metering system is discriminatory against the small power producer and thus prohibited under PURPA. Power Systems asserts that only two meters are required under the "as available" sales option. Power Systems goes on to argue that KU should provide an average purchase rate for the under 100 kw producers so that time-of-day metering would not be required.

In reviewing the proposed metering system the Commission concurs with Power Systems. First, there is nothing in the current GS tariff which requires a customer to be time-of-day metered so the proposed requirement would be discriminatory under Section 292.306(1) of the FERC Rule. This section provides that interconnection costs must be assessed on a non-discriminatory basis with respect to other customers with similar load characteristics. Second, to require time-of-day metering for under 100 kw QFs would be contrary to the spirit of both the FERC Rule and this Commission's regulation of minimizing both transaction and interconnection costs for this size producer. Thus the Commission will require KU to prepare and offer a purchase rate, based on the average avoided costs, over a 24-hour day. In addition, the Commission will require KU to interconnect with Weisenberger using a metering system that measures power coming into Weisenberger and power exiting into KU's system.

Findings and Orders

The Commission, after consideration of the evidence of record and being advised, is of the opinion and finds that:

1. The proposed Weisenberger purchase contract does not comply with Section 7(1) of 807 KAR 5:054.

2. Weisenberger after installing its generation equipment meets all requirements of the GS tariff and should be considered a GS customer.

3. The information necessary to develop backup rates for Qualifying Facilities does not exist and can only be developed by obtaining additional data so that an evaluation based on group probability of being on during KU's peak can be determined.

4. The proposed metering method is discriminatory under Section 292.306(1) of the FERC Rule.

IT IS THEREFORE ORDERED that:

1. KU shall prepare and offer a purchase contract as discussed herein that is in compliance with Section 7(1)(a) of 807 KAR 5:054.

2. After reviewing FERC certification that Weisenberger meets the requirement of a qualifying facility KU shall interconnect with Weisenberger using a non-time-differentiated two meter method as discussed herein.

3. KU shall prepare and file with this Commission within 30 days of the date of this Order a non-time-differentiated purchase rate to supplement its current SQF tariff.

Done at Frankfort, Kentucky, this 11th day of September, 1986.

PUBLIC SERVICE COMMISSION

Richard D. Heman Jr.

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director